

Social Security Administration

§ 404.726

which the insured person became entitled to benefits.

[43 FR 24795, June 7, 1978, as amended at 60 FR 19164, Apr. 17, 1995]

§ 404.722 Rebuttal of a presumption of death.

A presumption of death made based on § 404.721(b) can be rebutted by evidence that establishes that the person is still alive or explains the individual's absence in a manner consistent with continued life rather than death.

Example 1: Evidence in a claim for surviving child's benefits showed that the worker had wages posted to his earnings record in the year following the disappearance. It was established that the wages belonged to the worker and were for work done after his "disappearance." In this situation, the presumption of death is rebutted by evidence (wages belonging to the worker) that the person is still alive after the disappearance.

Example 2: Evidence shows that the worker left the family home shortly after a woman, whom he had been seeing, also disappeared, and that the worker phoned his wife several days after the disappearance to state he intended to begin a new life in California. In this situation the presumption of death is rebutted because the evidence explains the worker's absence in a manner consistent with continued life.

[60 FR 19165, Apr. 17, 1995]

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place. We may also ask for this evidence if you apply for child's benefits or for the lump-sum death payment as the widow or widower. If you are a widow, widower, or divorced wife who remarried after your marriage to the insured person ended, we may also ask for evidence of the remarriage. You may be asked for evidence of someone else's marriage if this is necessary to prove your marriage to the insured person was valid. In deciding whether the marriage to the insured person is valid or not, we will follow the law of the State where the insured person had his or her permanent home when you applied or, if earlier, when he or she died—see § 404.770. What evidence we

will ask for depends upon whether the insured person's marriage was a ceremonial marriage, a common-law marriage, or a marriage we will deem to be valid.

[43 FR 24795, June 7, 1978, as amended at 44 FR 34493, June 15, 1979]

§ 404.725 Evidence of a valid ceremonial marriage.

(a) *General.* A valid *ceremonial marriage* is one that follows procedures set by law in the State or foreign country where it takes place. These procedures cover who may perform the marriage ceremony, what licenses or witnesses are needed, and similar rules. A ceremonial marriage can be one that follows certain tribal Indian custom, Chinese custom, or similar traditional procedures. We will ask for the evidence described in this section.

(b) *Preferred evidence.* Preferred evidence of a ceremonial marriage is—

(1) If you are applying for wife's or husband's benefits, signed statements from you and the insured about when and where the marriage took place. If you are applying for the lump-sum death payment as the widow or widower, your signed statement about when and where the marriage took place; or

(2) If you are applying for any other benefits or there is evidence causing some doubt about whether there was a ceremonial marriage: a copy of the public record of marriage or a certified statement as to the marriage; a copy of the religious record of marriage or a certified statement as to what the record shows; or the original marriage certificate.

(c) *Other evidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, we will ask you to explain why and to give us a signed statement of the clergyman or official who held the marriage ceremony, or other convincing evidence of the marriage.

§ 404.726 Evidence of common-law marriage.

(a) *General.* A *common-law marriage* is one considered valid under certain State laws even though there was no formal ceremony. It is a marriage between two persons free to marry, who